

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
F. D. SHAGETS)

For Appellant: F. D. Shagets,
in pro. per.

For Respondent: Mark McEvilly
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of F. D. Shagets against a claim for refund of personal income tax in the amount of \$51.01 for the income year 1974.'

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The sole issue is whether the claim for refund was barred by the statute of limitations.

On April 10, 1980, respondent received an amended 1974 personal income tax return from appellant. The amended return reduced the amount of taxable income which had been reported on appellant's original 1974 return and claimed a refund of \$51.01. Respondent denied the claim because it was not filed within the period prescribed by the statute of limitations. This appeal followed.

The statute of limitations, section 19053 of the Revenue and Taxation Code, provides in pertinent part:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer, ...

The final date prescribed for filing 1974 calendar year returns without an extension was April 15, 1975. So April 15, 1979 was the final date on which appellant could have filed a timely claim for refund. Appellant did not file the claim for refund until April 1980.

We have repetitively held that a claim for refund is barred where the claim was not filed within the period prescribed in section 19053 of the Revenue and Taxation Code. (Appeal of Samuel L. Fox, Cal. St. Bd. of Equal., August 19, 1975; Appeal of Beverly Waslauk, Cal. St. Bd. of Equal., January 9, 1979; Appeal of George C. Harrold, Jr., Dec., and Dorothy Harrold, Cal. St. Bd. of Equal., June 30, 1980.

Appellant maintains that this claim should not be barred by the otherwise applicable statute of limitations since he originally believed that a five-year deadline existed for filing claims for refund. He appears to take the position that respondent was under a duty to advise him about the limitation period.

We cannot concur. A taxing agency is not subject to a duty to inform a taxpayer of the time within which a claim must be filed. (Appeal of Cleo V. Mott, Cal. St. Bd. of Equal., August 7, 1963.) Indeed, appellant's argument essentially appears to be that ignorance of the law should excuse the performance required by the law. We cannot

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agree. (Appeal of Tolbert D. Spradlin, Cal. St. Rd. of
Equal., January 7, 1975.)

Accordingly, we sustain respondent's action.

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